



EMPLOYMENT TRIBUNALS

Claimant: Abass Bello

Respondent: Gasrec Limited

JUDGMENT

The respondent's application dated **20 August 2024** for reconsideration of the judgment sent to the parties on **12 August 2024** is refused because there is no reasonable prospect of the original decision being varied or revoked.

REASONS

Background

1. The claimant presented a claim form on 31 March 2022. His claims are for: direct race discrimination contrary to section 13 of the Equality Act 2010, direct religious belief discrimination contrary to section 13 of the Equality Act 2010, harassment related to religious belief contrary to section 26 of the Equality Act 2010, and unauthorised deduction from wages.
2. The case was listed for a full merits hearing from 10 – 12 July. At the start of the hearing, the respondent applied to strike out the claim. The Claimant applied to adjourn the hearing.
3. This application was made on 20 August 2024 and referred to me on 18 December 2024. I considered it as soon as I was able to do so thereafter. The Employment Tribunal Procedure Rules 2024 [the 2024 Rules] came into force on 6 January 2025. Those rules apply to the determination of this application for reconsideration.

The application

4. The Respondent relies on the following three matters which it says it did not have a fair opportunity to address during the course of the hearing:
 - a) The Claimant told the Tribunal at the hearing that he could not read or write English, and the Tribunal accepted this evidence without affording the Respondent the opportunity to challenge it.
 - b) The Tribunal did not inform the parties until giving judgment that it was considering whether to make an order of its own motion. The Respondent had no opportunity to make submissions on whether this option was open to the Tribunal as a matter of law.
 - c) The Tribunal did not consider submissions as to whether or not the Claimant's failure to understand the importance of providing a witness statement was reasonable. The Respondent had no opportunity to challenge the Claimant in cross examination on the reasonableness of his understanding.

Law

5. Rule 68 of the 2024 Rules states:

“(1) The Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so.

(2) A judgment under reconsideration may be confirmed, varied or revoked.

(3) If the judgment under reconsideration is revoked the Tribunal may take the decision again. In doing so, the Tribunal is not required to come to the same conclusion”

6. Rule 70 of the 2024 Rules states:

“(1) The Tribunal must consider any application made under rule 69 (application for reconsideration).

(2) If the Tribunal considers that there is no reasonable prospect of the judgment being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application must be refused and the Tribunal must inform the parties of the refusal.

(3) If the application has not been refused under paragraph (2), the Tribunal must send a notice to the parties specifying the period by which any written representations in respect of the application must be received by the Tribunal, and seeking the views of the parties on whether the application can be determined without a hearing. The notice may also set out the Tribunal's provisional views on the application.

- (4) If the application has not been refused under paragraph (2), the judgment must be reconsidered at a hearing unless the Tribunal considers, having regard to any written representations provided under paragraph (3), that a hearing is not necessary in the interests of justice.
- (5) If the Tribunal determines the application without a hearing the parties must be given a reasonable opportunity to make further written representations in respect of the application.

7. Rule 3 of the 2024 Rules states:

- (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
- (2) Dealing with a case fairly and justly includes, so far as practicable—
- (a) ensuring that the parties are on an equal footing,
 - (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues,
 - (c) avoiding unnecessary formality and seeking flexibility in the proceedings,
 - (d) avoiding delay, so far as compatible with proper consideration of the issues, and
 - (e) saving expense.
- (3) The Tribunal must seek to give effect to the overriding objective when it—
- (a) exercises any power under these Rules, or
 - (b) interprets any rule or practice direction.”

Conclusions

8. The tribunal has the power in law to consider adjourning a case on its own initiative. This is a well-established principle. In this case, the tribunal heard submissions from both parties on whether or not the case should proceed. It is not a case where there was no prospect of the case being adjourned.
9. In any event, the tribunal did not adjourn the case of its own motion to avoid the requirements of Rule 30A of the Employment Tribunal Rules of Procedure 2013. The tribunal found that striking out the claim was not the appropriate response in this case. It found that an adjournment with an unless order was more proportionate. The tribunal has a discretion to strike out a claim or not. As part of exercising that discretion, the tribunal considered (as it is bound to do) whether a less draconian measure was a more appropriate response.
10. The tribunal heard submissions from both parties. The respondent had the opportunity to request to challenge the evidence of the claimant that he was unable to read or write English. It did not do so. The respondent’s legal

representative made submissions on this point. It was said that the claimant had not previously raised his inability to write in English during the proceedings.

11. The respondent's legal representative submitted that that an earlier Employment Judge had explained what was required of the claimant in layman's terms when preparing a witness statement. There was no request to challenge the claimant's understanding under cross-examination. The respondent did so by way of submissions.
12. The issue as to how to proceed was fully aired at the hearing in a proportionate manner, taking into account the complexity of the issues before the tribunal. Both parties addressed the tribunal on whether the respondent's application for a strike out should be granted. In addition, the tribunal ensured the parties were on an equal footing by hearing submissions on the material points from both parties.
13. There has been no procedural unfairness to the respondent that would make it in the interests of justice to reconsider the judgment.
14. The application is refused pursuant to Rule 70(2) of the 2024 Rules. As such, this decision was made without following the procedure in Rules 70(3) - (5).
15. The decision would have been the same if determined pursuant to the 2013 Rules of Procedure.

Approved by:

Employment Judge **Freshwater**

Date 28 January 2025

JUDGMENT SENT TO THE PARTIES ON

29 January 2025

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FOR THE TRIBUNAL OFFICE